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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,807	06/18/2001	Jean-Marc Ascione	05725.0636-00	8671

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 11/20/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/881,807	<b>Applicant(s)</b> ASCIONE ET AL.	
	<b>Examiner</b> Eisa B Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-168 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-168 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1751

Claims 1-168 are pending in this application.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 141 objected to because of the following informalities: This claim is a method claim and not composition claim and therefore, the word "composition" should be changed to "method". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

- 2 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 3-4, 9-12, 26, 29, 33-36, 58-59, 64-67, 81-86, 88-92, 113-114, 119-125, 136, 139, 140-141, 143 and 145-147 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3-4, 9-12, 26, 29, 33-35, 58-59, 64-67, 81, 84, 88-90, 113-114, 119-122, 136, 139, 143 and 145 are indefinite because the claims recite the limitations "groups are optionally substituted". It is unclear what types of substituents are presented in the hydrocarbon chains. Clarification is required.

Claims 36, 82-83, 85-86, 91-92, 123-125, 137-138, 140-141 and 146-147 are dependent on rejected claims, therefore, they are rejected as well.

### ***Claim Rejections - 35 USC § 103***

- 3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1751

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-168 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grollier et al. (US 5,009,880).

Grollier (US' 880) teaches a composition and process for the treating of keratin materials. The composition comprises from 0.01 to 10% of cationic homopolymer of quaternium 37 having a formula similar to the claimed formula (I) when in the reference's formula R<sub>1</sub> is H or CH<sub>3</sub>, A is a linear or branched alkyl group having 1 to 6 carbon atoms, R<sub>2</sub>, R<sub>3</sub> and R<sub>4</sub> are alkyl groups having 1 to 18 carbon atoms wherein the quaternary amino group having (CH<sub>3</sub>)<sub>3</sub>N<sup>+</sup>-CH<sub>2</sub>- when R<sub>2</sub>, R<sub>3</sub> and R<sub>4</sub> are alkyl groups having one carbon atom (CH<sub>3</sub>) and A is an alkyl group having also one carbon atom (CH<sub>2</sub>), having (CH<sub>3</sub>)<sub>3</sub>N<sup>+</sup>-(CH<sub>2</sub>)<sub>2</sub>- when R<sub>2</sub>, R<sub>3</sub> and R<sub>4</sub> are alkyl groups having one carbon atom (CH<sub>3</sub>) and A is an alkyl group having two carbon atom (CH<sub>2</sub>)<sub>2</sub>, having (CH<sub>3</sub>)<sub>3</sub>N<sup>+</sup>-(CH<sub>2</sub>)<sub>3</sub>- when R<sub>2</sub>, R<sub>3</sub> and R<sub>4</sub> are alkyl groups having one carbon atom (CH<sub>3</sub>) and A is an alkyl group having three carbon atom (CH<sub>2</sub>)<sub>3</sub> and having (CH<sub>3</sub>)<sub>3</sub>N<sup>+</sup>-(CH<sub>2</sub>)<sub>4</sub>- when R<sub>2</sub>, R<sub>3</sub> and R<sub>4</sub> are alkyl groups having one carbon atom (CH<sub>3</sub>) and A is an alkyl group having four carbon atom (CH<sub>2</sub>)<sub>4</sub> as claimed in claims 1-16 and 40-42 (see col. 6, lines 11-68, the formulae and col. 91 claim 1), from 0.5 to 25% of fatty alcohols such as decyl alcohol, cetyl alcohol and stearyl alcohol as claimed in claims 17-21 and 43-45 (see col. 51, lines 36-43), from 0.5 to 25% of polyoxyethyleneated or polyglycerolated fatty alcohols having a linear or branched fatty chain consisting of 8 to 18 carbon atoms and most frequently containing 2 to 30 moles of ethylene oxide or preferably 2 to 10 or 1 to 10 and preferably 1 to 6 moles of glycerol such as polyglycerolated stearyl alcohol or cety

Art Unit: 1751

alcohol containing 2 moles of glycerol as claimed in claims 22-32 and claims 46-48 (see col. 51, lines 55-66), from 1 to 4% of polyoxyethyleneated fatty amides and mono- or di-ethanolamides of acids derived lauric acid, oleic acid or stearic acid as claims in claims 33-39 and 49-51 (see col. 49, lines 5-9 and col. 52 lines 2-7), oxidizing agents such as hydrogen peroxide as claimed in claim 52 (see col. 52, lines 37-38) and anionic polymers as claimed in claim 55 (see col. 2, line 41). Grollier also teaches compositions that can be in form of aqueous, emulsion or gels as claimed in claim 56 (see col. 53, lines 37-40). Grollier also teaches methods for treating hair similar to those claimed in claims 57-165 when the reference's methods comprise applying to the hair cosmetic compositions as described above, in order to produce a conditioning effect on the hair such as hairstyling (see col. 53, lines 8-9). Regarding claims 166 and 168 it would have been obvious to one having ordinary skill in the art at the time the invention was made to use such a multi-compartment kit for treating keratin fibers because the reference teaches and discloses that the compositions can be packed and stored in different ways (see col. 55, lines 58-59) and, thus, a person of ordinary skill would expect such a composition be packed in any container that have similar properties to those claimed, absent unexpected results.

The instant claims differ from the reference by optimizing the percentage amounts of the ingredients such as hydrogen peroxide in the composition.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition because the reference teaches oxidation compounds that converted into dyestuffs by a condensation reaction in the presence of oxidizing medium such as hydrogen peroxide (see col. 52, lines 33-37), and thus, a person of ordinary skill in the art would optimize the amounts of the oxidizing

Art Unit: 1751

agent that used in the reaction in order to control the degrees of the color of the oxidation dyestuffs, absent unexpected results.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217.

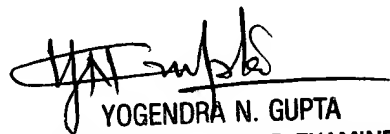
The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Elhilo

November 16, 2002

  
YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700